STATE OF MICHIGAN

COURT OF APPEALS

KATHRYN BARRUS,

Plaintiff-Appellant,

v

G & R FELPAUSCH COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 24, 2004

No. 244052
Calhoun Circuit Court
LC No. 02-000046-NO

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff tripped on a bunched up rug in defendant's store. The trial court granted defendant's motion for summary disposition, finding that the danger was open and obvious and defendant owed no duty to plaintiff.

II. STANDARD OF REVIEW

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

III. ANALYSIS

Generally, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). An invitor must warn of hidden defects, but is not required to eliminate or warn of open and obvious dangers unless he should anticipate the harm despite the invitee's knowledge of it. *Id.*; *Millikin v Walton Manor Mobile*

Home Park, Inc, 234 Mich App 490, 495, 498; 595 NW2d 152 (1999). In determining whether a danger presents an unreasonable risk of harm despite being open and obvious, a court must consider whether special aspects exist, such as a condition which is unavoidable or which poses an unreasonably high risk of severe injury. *Lugo, supra* at 516-517. The determination must be based on the nature of the condition at issue, and not on the degree of care used by the invitee. *Id.* at 523-524.

Plaintiff asserts that there is a factual question concerning whether the danger was open and obvious. Whether a danger is open and obvious depends upon whether it is reasonable to expect an average user with ordinary intelligence to discover the danger upon casual inspection. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995).

Plaintiff did not present any explanation why a buckled up rug would not be visible on casual inspection, other than the distractions of a crowded store that would not constitute a special aspect. *Lugo, supra*. Plaintiff failed to submit evidence that would raise a genuine issue of material fact regarding the open and obvious nature of the hazard.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens